

industrial development bond to finance several housing projects with known sites located entirely within its geographic jurisdiction. M's geographic jurisdiction is coextensive with the combined geographic jurisdictions of Counties N and O. The projects are separately owned and managed. They are not adjacent to each other. The projects also are located in County N. Under the provisions of paragraph (c), M must give issuer approval.

(ii) M, which has no elected officials or legislature, was created by both Counties N and O pursuant to a special statute of State Q permitting such a joint undertaking. Both Counties N and O have an applicable elected representative. Under the provisions of paragraph (e)(2), either County N, County O, or State Q is deemed to be the next higher governmental unit with an applicable elected representative, and an applicable elected representative from any of these units may give the issuer approval for Authority M. Therefore, either the applicable representative of County N, County O, or State Q can give the issuer approval for Authority M.

(iii) For purposes of the host approval, the issuer approval by M will satisfy the host approval requirement only if the applicable elected representative of County N or State Q gives issuer approval for M. Under the provisions of paragraph (e)(2), the host approval requirement is satisfied only if qualified persons residing at the site of the facility are entitled to vote for the applicable elected representative who gave the approval (*i.e.*, the representative of State Q or County N). However, if the applicable elected representative of O gave issuer approval for Authority M, a separate host approval would be required because the residents of the sites where the projects are located (*i.e.*, County N) could not vote for the applicable elected representative of County O.

(iv) Public Housing Authority M conducts a public hearing concerning prospective housing projects following notice thereof published in a newspaper of general circulation in County N. Additionally, M provides notice to the residents of O (which are also within M's jurisdiction) in the manner required for notice of public hearing for other purposes under State Q law. Following the public hearing, the chief elected executive officer of County N approves for Authority M prospective issues for the project. M issues two \$7 million issues, one for each project. One issue is issued six months after the date of approval; the second issue is issued thirteen months thereafter. On these facts, only the first issue satisfied the public approval requirement of this section.

[T.D. 7892, 48 FR 21117, May 11, 1983]

§ 5f.103-3 Information reporting requirements for certain bonds.

(a) *General rule.* Under section 103(l), any private purpose bond issued after December 31, 1982 (including any obligation issued thereafter to refund private purpose bonds issued before December 31, 1982) shall be treated as an obligation not described in section 103(a) unless the information reporting requirement (as described in paragraph (c) of this section) is substantially satisfied with respect to the issue of which the bond is a part. For rules concerning bonds issued after December 31, 1986, see § 1.149(e)-1 of this chapter.

(b) *Private purpose bonds.* For purposes of this section, the term "private purpose bond" means—

(1) Any industrial development bond (as defined in section 103(b)(2) and § 1.103-7(b)(1)), or

(2) Any obligation which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly—

(i) To finance loans to individuals for educational or related expenses (hereinafter referred to as a "student loan bond"), or

(ii) By an organization described in section 501(c)(3) which is exempt from taxation by reason of section 501(a) (hereinafter referred to as "private exempt entity bond").

The meaning of the terms "major portion" and "directly or indirectly" shall be the same as under § 1.103-7. Student loan bonds include, but are not limited to, qualified scholarship funding bonds (as defined in section 103(e)).

(c) *Information required.* An obligation satisfies the requirements of section 103(l) and this section only if it is issued as part of an issue with respect to which the issuer, based on information and reasonable expectations determined as of the date of issue, submits on Form 8038 the information required therein, including—

(1) The name, address, and employer identification number of the issuer,

(2) The date of issue (as defined in paragraph (g)(1)),

(3) The face amount of the issue,

(4) The total purchase price of the issue,

(5) The amount allocated to a reasonably required reserve or replacement fund,

(6) The amount of lendable proceeds (as defined in paragraph (g)(4) of this section),

(7) The stated interest rate of each maturity (as defined in paragraph (g)(2) of this section) or, if the interest rate is variable, a description of the method under which the interest rate is computed,

(8) The term (as defined in paragraph (g)(3)) of each maturity,

(9) A general description of the property to be financed by the issue (including property financed by an obligation that will be refunded with the issue proceeds) which includes—

(i) The type of bond issued, that is, a student loan bond, a private exempt entity bond, or an industrial development bond and in the case of an industrial development bond described in section 103(b)(4), the subparagraph of section 103(b)(4) that describes the property, *e.g.*, for a football stadium, that the property is described in section 103(b)(4)(B),

(ii) The recovery classes (as defined in section 168(c)(2)), if applicable, of the various items of financed property and the approximate amount of lendable proceeds attributable thereto,

(iii) The approximate amount of lendable proceeds attributable to land or other property not described in subdivision (ii),

(iv) In the case of obligations described in section 103(b)(6) or private exempt entity bonds, the four-digit Standard Industrial Classification Code of the facilities financed,

(10) If section 103(k) (relating to public approval requirement for industrial development bonds) applies to such issue, the name(s) of the approving governmental unit(s) and of the applicable elected representative(s) (as defined in section 103(k)(2)(E) and § 5f.103-2(e)) or a description of the voter referendum that approved the issue for such unit(s), and

(11) The name, address, and employer identification number of—

(i) Each initial principal user (as defined in paragraph (g)(5) of this section) of any facilities provided with the proceeds of the issue,

(ii) The common parent, if any, of any affiliated group of corporations (as defined in section 1504(a) but determined without regard to the exceptions of section 1504(b)) of which such initial principal user is a member, and

(iii) Any person (not included under paragraph (c)(11)(i)) that is treated as a principal user under section 103(b)(6)(L), but only if the issue is treated as a separate issue under section 103(b)(6)(K).

The information to be supplied must be determined based on information and reasonable expectations as of the date of issue. Therefore, such statement need not be amended to report information learned subsequent to the date of issue. However, if the statement is filed after the date of issue it may reflect such information and the reasonable expectations of the issuer as of that date.

(d) *Additional information.* An issuer may supply the following information—

(1) The average maturity of the issue (as defined in section 103(b)(14)), and

(2) The average reasonably expected economic life (as defined in section 103(b)(14)) of the facility which is financed with the issue.

(e) *Time for filing.* The statement required by section 103(l) and this section shall be filed not later than the 15th day of the 2nd calendar month after the close of the calendar quarter in which the obligation is issued. It may be filed at any time before such date but must be complete based on facts and reasonable expectations as of the date of issue. The Secretary may grant an extension of time for filing the statement required under section 103(l) and this section if there is reasonable cause for the failure to file such statement in a timely fashion.

(f) *Place for filing.* Form 8038 is to be mailed to the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

(g) *Definitions.* For purposes of this section—

(1) The term *date of issue* means the date on which the issuer physically exchanges the first of the obligations which are part of the issue for the underwriter's (or other purchaser's) funds. In the event that amounts are

periodically advanced with respect to an issue, the date of issue is when the first of such obligations under the issue is created and the funds are advanced.

(2) The term *maturity* means those obligations of the issue having both the same maturity date and the same stated interest rate.

(3) The term *term of an issue* means the duration of the period beginning on the date of issue and ending on the latest maturity date of any obligation of the issue without regard to optional redemption dates.

(4) The term *lendable proceeds* means the amount of the original proceeds, net of amounts allocated to a reasonably required reserve or replacement fund. See generally § 1.103-13(b) and § 1.103-14(d) for further definitions.

(5) The term *initial principal user* means each person who as of the date of issue is obligated to use the facility to such an extent that under section 103(b)(6) such person would be treated as a principal user. With respect to organizations described in section 501(c)(3), however, such determination is made without regard to whether such organization is treated as an exempt organization under section 103(b)(3) and § 1.103-7(b)(2).

[T.D. 7892, 48 FR 21120, May 11, 1983, as amended by T.D. 8129, 52 FR 7411, Mar. 11, 1987; T.D. 8425, 57 FR 36003, Aug. 12, 1992]

§ 5f.163-1 Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form.

(a) *Denial of deduction generally.* Interest paid or accrued on a registration-required obligation (as defined in paragraph (b) of this section) shall not be allowed as a deduction under section 163 or any other provision of law unless such obligation is issued in registered form (as defined in § 5f.103-1(c)).

(b) *Registration-required obligation.* For purposes of this section, the term “registration-required obligation” means any obligation except any one of the following:

(1) An obligation issued by a natural person.

(2) An obligation not of a type offered to the public. The determination as to whether an obligation is not of a type offered to the public shall be based on

whether similar obligations are in fact publicly offered or traded.

(3) An obligation that has a maturity at the date of issue of not more than 1 year.

(4) An obligation issued before January 1, 1983. An obligation first issued before January 1, 1983, shall not be considered to have been issued on or after such date merely as a result of the existence of a right on the part of the holder of such obligation to convert such obligation from registered form into bearer form, or as a result of the exercise of such a right.

(5) An obligation described in subparagraph (1) of paragraph (c) (relating to certain obligations issued to foreign persons).

(c) [Reserved]

(d) *Effective date.* The provisions of this section shall apply to obligations issued after December 31, 1982, unless issued on an exercise of a warrant for the conversion of a convertible obligation if such warrant or obligation was offered or sold outside the United States without registration under the Securities Act of 1933 and was issued before August 10, 1982.

(e) *Obligations first issued after December 31, 1982, where the right exists for the holder to convert such obligation from registered form into bearer form.* [Reserved]

(f) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). All of the shares of Corporation X are owned by two individuals, A and B. X desires to sell all of its assets to Corporation Y, all of the shares of which are owned by individual C. Following the sale, Corporation X will be completely liquidated. As partial consideration for the Corporation X assets, Corporation Y delivers a promissory note to X, secured by a security interest and mortgage on the acquired assets. The note given by Y to X is not of a type offered to the public.

Example (2). Corporation Z has a credit agreement with Bank M pursuant to which Corporation Z may borrow amounts not exceeding \$10X upon delivery of Z's note to Bank M. The note Z delivers to M is not of a type offered to the public.

Example (3). Individuals D and E operate a retail business through partnership DE. D wishes to loan partnership DE \$5X. DE's note evidencing the loan from D is not of a type offered to the public.